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No. 265

In the Supreme Court of the United States

OCTOBER TERM, 1939

FEDERAL COMMUNICATIONS COMMISSION, PETITIONER

v.

THE POTTSVILLE BROADCASTING COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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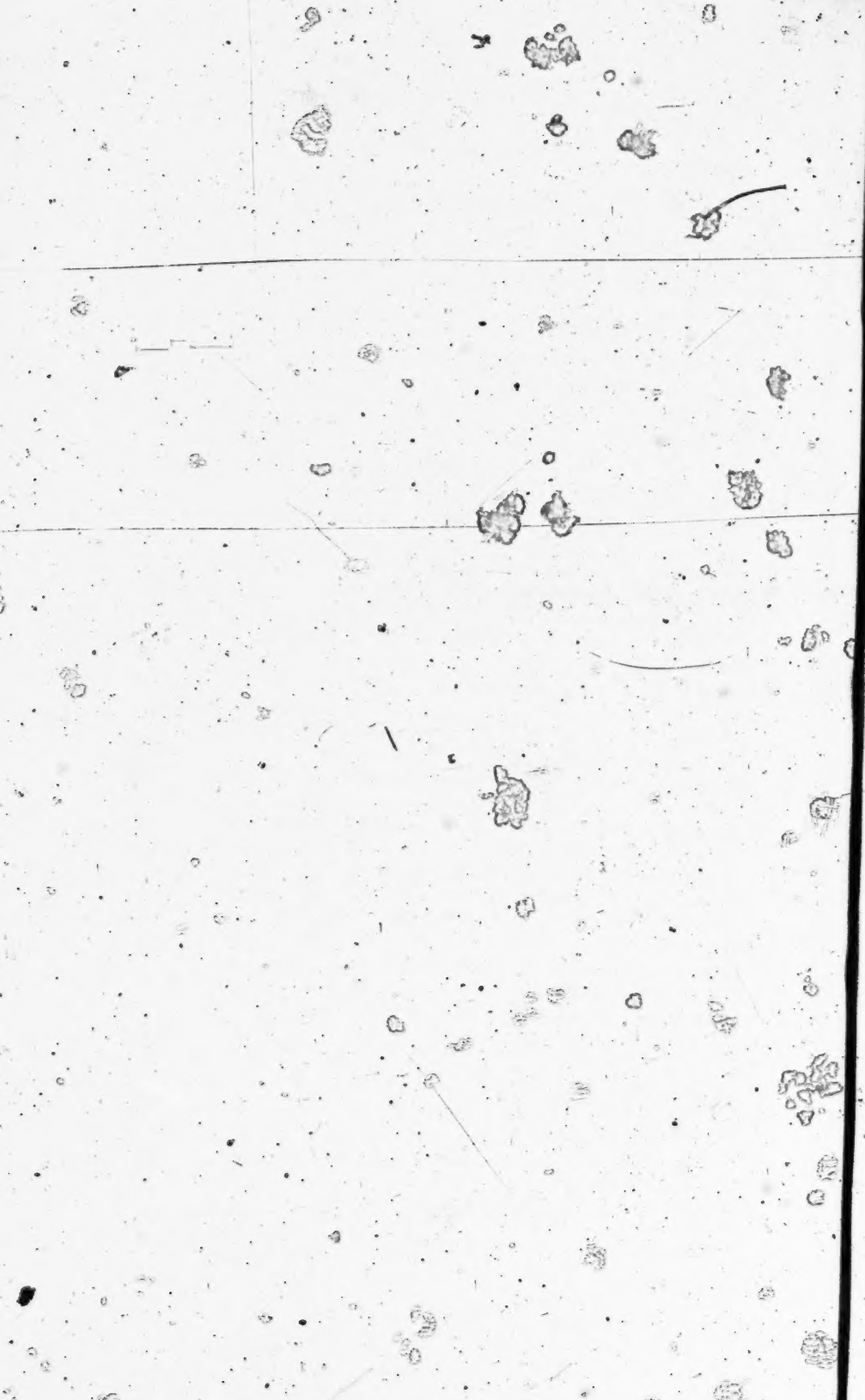

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The Solicitor General, on behalf of the Federal Communications Commission, prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the District of Columbia, entered in the above cause on April 3, 1939, and the decree entered pursuant thereto on May 15, 1939, commanding the Commission to set aside an order relating to the application of the Pottsville Broadcasting Company for a construction permit for a radio broadcast station having the effect of designating the application for hearing on a comparative basis with other applications, and commanding the Commission to hear and reconsider the application of the Pottsville Broadcasting Company on the basis of the record as originally made.

OPINIONS BELOW

The opinions of the United States Court of Appeals for the District of Columbia (R. 24–29, 33) have not yet been reported.

JURISDICTION

The decision of the United States Court of Appeals sought to be reviewed was entered on April 3, 1939 (R. 24), its opinion on rehearing on May 5, 1939 (R. 33), and its decree on May 15, 1939 (R. 37). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The Commission denied respondent's application for a construction permit for a radio broadcast station on the primary ground that it was not financially responsible and on the secondary ground that its chief stockholder was not a local resident. The court below reversed on the primary ground and remanded for the Commission's independent consideration of the secondary ground. The Commission set the remanded cause for oral argument, together with two other conflicting applications, which had been filed and heard before an examiner after the respondent's application. The question is whether the court below has power to issue a writ of mandamus to compel the Commission to reconsider petitioner's application on the original record and without regard to the subsequent applications.

STATUTE INVOLVED

The applicable provisions of the Communications Act of 1934, c. 652, 48 Stat. 1064, as amended, are printed in the Appendix, *infra*, pp. 23–27.

STATEMENT

On May 19, 1936, the Pottsville Broadcasting Company filed an application for a construction permit to erect a new radio broadcast station at Pottsville, Pennsylvania, requesting the use of the frequency 580 kilocycles, 250 watts power, daytime only (R. 5, 20). The Commission on July 2, 1936, designated this application for hearing before an examiner; on August 12, 1936, this hearing was set for September 30, 1936, when it was held (R. 13, 20). On August 10, 1936, the Schuylkill Broadcasting Company filed its application for a construction permit, requesting the same facilities as the Pottsville Broadcasting Company for use in the same city (R. 13). On September 3, 1936, a request to designate the Schuylkill Broadcasting Company's application for hearing on the same day as the application of the Pottsville Broadcasting Company was filed by the Schuylkill Company and consented to by the Pottsville Broadcasting Company (R. 13–14). This petition was denied by the Commission (R. 14), but the Commission on September 8, 1936, permitted the Schuylkill Company to intervene in the hearing held on September 30, 1936, on the application of the Pottsville Broadcasting Company (R. 13). On November 5, 1936,

an examiner of the Commission submitted his report, No. I-305, recommending that the application of the Pottsville Broadcasting Company be granted (R. 1; 15). Exceptions were filed by the Schuylkill Company on November 20, 1936. On May 4, 1937, the Commission denied the application of the Pottsville Broadcasting Company, effective July 6, 1937 (R. 15).

On December 7, 1936, the Pottsville News and Radio Corporation filed its application for a construction permit requesting the same facilities in the same city as the Pottsville Broadcasting Company and the Schuylkill Broadcasting Company (R. 20). On April 12, 1937, the applications of the Schuylkill Broadcasting Company and the Pottsville News and Radio Corporation were heard in a consolidated hearing (R. 15, 20). The Pottsville Broadcasting Company appeared and participated in the consolidated hearing on these applications (R. 15). On June 24, 1937, the Commission's examiner submitted his report No. I-442, recommending that the application of the Schuylkill Company be granted for a construction permit to operate a daytime radio station at Pottsville, on the frequency 580 kilocycles, 250 watts power (R. 16). Oral argument on the Pottsville News and Radio Corporation application and the Schuylkill Company application was indefinitely continued by the Commission, pending decision by the court below on the appeal of the Pottsville Broad-

casting Company from the Commission's denial of its application (R. 16).

This appeal was filed in the court below on July 26, 1937 (R. 15). On May 9, 1938, the court in *Pottsville Broadcasting Company* v. *Federal Communications Commission*, 98 F. (2d) 288, reversed the determination of the Commission denying the application of the Pottsville Broadcasting Company and remanded the case to the Commission for reconsideration in accordance with the views expressed in that opinion (R. 1–4). The court below reversed the Commission on the ground that the appellant and the Commission had made a mutual mistake in assuming that subscriptions to stock of the applicant corporation were not binding without the approval of the Pennsylvania Securities Commission.[1] The court stated that it was unable to determine whether the Commission's further objection to the granting of the application, on the ground that the applicant's principal stockholder was not a local resident and thus was not acquainted with the needs of the area proposed to be served, would have been controlling in the absence of the erroneous doubt as to the financial responsibility of the Company, and therefore reversed for reconsideration by the Commission. (R. 1–4.)

[1] It may be noted that the error arose from the evidence given by the chief officer of the Pottsville Broadcasting Company (R. 3).

The Pottsville Broadcasting Company on May 23, 1938, requested the Commission to grant its application (R. 16). On June 9, 1938, the Commission took the following action: (1) It denied without prejudice the petition of the Pottsville Broadcasting Company for grant of its application for construction permit. (2) It granted the petition of Pottsville News and Radio Corporation, for oral argument on the applications of all three of the applicants for identical facilities. (3) The Commission directed that thereafter it would consider these applications individually on a comparative basis, although not in a consolidated proceeding, and would grant the application which in the judgment of the Commission would best serve the public interest. (R. 8.)

The Pottsville Broadcasting Company applied to the court below for the issuance of a writ of prohibition to prevent the Commission from (a) hearing argument or reargument except on the one question upon which the case was remanded; (b) from considering the application of petitioner on a comparative basis with other applications subsequently filed; (c) from hearing argument upon the other applications until such time as the Commission shall have complied with the judgment of the Court; (d) from taking any other procedural steps or exercising jurisdiction other than that contemplated in the judgment of the court reversing the determination of the Commission. It also

asked for a writ of mandamus commanding the Commission (a) to render a decision, within a time fixed by the court, in conformity with the judgment earlier rendered by the court; (b) to base that decision on the one question with respect to which the case was remanded; and (c) to grant the application of the petitioner on the record as submitted and considered by the court (R. 11).

The court below, on April 3, 1939, rendered an opinion which purported to grant the relief prayed but indicated that it did not think it necessary to issue the writs of prohibition and mandamus, upon the assumption that the Commission would follow the views expressed therein (R. 29). The Commission on April 20, 1939, filed a petition for rehearing and motion for entry of judgment (R. 30). On May 5, 1939, the court in a *per curiam* opinion denied the petition for rehearing (R. 33) and on May 15, 1939, entered an order for issuance of a writ of mandamus commanding the Commission (a) to set aside the order denying the application of the Pottsville Broadcasting Company and designating such application for hearing on a comparative basis, and (b) to hear and reconsider the application of the Pottsville Broadcasting Company on the basis of the record as originally made (R. 37). Issuance of the writ of mandamus was stayed for 30 days pending the filing of this petition for a writ of certiorari (R. 37).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In misinterpreting Section 402 (e) of the Communications Act of 1934, providing that "review by the court shall be limited to questions of law";

2. In holding that it could issue a writ of mandamus to control the administrative functions of the Commission;

3. In holding that an appeal from the Commission should have the same effect and be governed by the same rules as an appeal from a lower federal court to an appellate court;

4. In assuming that the Commission was not conforming and would not conform fully and properly with the previous decision of the court below in this case;

5. In misconstruing the rules of practice of the Commission, particularly Rule 106.4 applicable to the fixing of dates for hearings on conflicting applications for related matters:

6. In subordinating the interests of the public in the administration of the Communications Act of 1934 to the private interest of a particular applicant who happened to be the first to file for given facilities and also has obtained judicial review of the Commission's denial of its application;

7. In holding that the court, after entering its judgment under Section 402 (e) of the Communications Act of 1934, has authority to control the

Commission's action in respect of matters not in issue before the court or included in its judgment of reversal;

8. In issuing a writ of mandamus where the petitioner had not exhausted its administrative remedies, had not shown a clear right to the relief or any threat of injury if the writ were denied, and asked relief which contradicted the statutory duty of the Commission;

9. In directing the Commission to set aside its order denying without prejudice the application of the Pottsville Broadcasting Company and designating the application for hearing on a comparative basis; and

10. In commanding the Commission to hear and reconsider the application of the Pottsville Broadcasting Company on the basis of the record as originally made.

REASONS FOR GRANTING THE WRIT

The court below has granted respondent the extraordinary relief of a writ of mandamus directed against the Federal Communications Commission to prevent it from considering respondent's application for a construction permit on a comparative basis with two other conflicting applications. This decision seems to have been somewhat influenced by the belief that, because respondent "was first in the field", it should receive priority over subsequent applications (see R. 29). But the primary ground of the decision was the belief that such action vio-

lated the earlier judgment of the court below. It had earlier reversed the Commission in its denial of the application on one ground and had not been sure whether a second objection of the Commission would alone have been controlling. "The case, with that question alone open, was remanded to the Commission for reconsideration" (R. 28). Because the Commission undertook to consider other applications and other issues, the court ordered a writ of mandamus to issue which would prevent considering the three applications on a comparative basis and which would command the Commission to consider respondent's application "on the basis of the record as originally made" (R. 37).

We believe that this decision exceeds the statutory powers of the court below, that it is an unwarranted invasion of the administrative field, and that it overrides the basic purpose of the licensing requirements of the Communications Act of 1934. It seems evident, in any event, that principles of the gravity of those resulting from the decision below should not be introduced or established save on the full consideration of this Court.

1. The history of the legislative precursors of the Communications Act of 1934 offers a forceful commentary on the rigid demarcation of the administrative from the judicial functions. The decision below seems to fly in the face of the decisions of this Court which led to and which recognized that separation of judicial and administrative powers.

The Radio Act of 1927 (c. 169, 44 Stat. 1162, 1169) authorized the United States Court of Appeals for the District of Columbia to hear, review and determine denials of applications for radio stations and authorized that court to alter or revise the decision appealed from "and enter such judgment as to it may seem just." This Court, in *Federal Radio Commission v. General Electric Company,* 281 U. S. 464, held that the judicial review provisions of the Radio Act were so broad as to make the Court of Appeals "a superior and revising agency in the same field" and that this Court could not review the decisions of that court without entering into a nonjudicial field in violation of constitutional limitations. Congress thereupon amended the Radio Act of 1927 to provide that "the review by the court shall be limited to questions of law" and that "in event the Court shall render a decision and enter an order revising the decision of the Commission, it shall remand the case to the Commission to carry out the judgment of the court" (48 Stat. 1094). These provisions are identical with those found in Section 402 (e) of the Communications Act, *infra.* In *Radio Commission* v. *Nelson Bros. Co.,* 289 U. S. 266, this Court held that the amended statute "contemplates a judicial judgment by the Court of Appeals", so that this Court had jurisdiction to review the judgment of the Court of Appeals.

It is abundantly plain, therefore, that the court below under this statute cannot act as "'a superior

and revising agency' in the administrative field" (*Radio Commission* v. *Nelson Bros. Co., supra,* 274). That is precisely what it has done. After determining, in its first opinion, that the Commission erred as a matter of law in denying respondent's application because its stock subscription had not been approved by the Pennsylvania Securities Commission, the court had no authority to prescribe that the Communications Commission must ignore other conflicting applications, must confine itself to the evidence before it at the first hearing, and (in necessary effect) that the Commission must grant respondent's application unless it determined that the non-residence of the chief stockholder was, standing alone, a sufficient ground for denial. The choice between conflicting applications, the preference that as a general rule should be given the earlier applicant, and the desirability of reopening proceedings for further evidence, are matters peculiarly administrative in their nature. The statute and the decisions of this Court commit their decision to the Commission, not to the court below.

The court seems (R. 26–27) to have justified its decision on the ground that Section 402 (e) directs it, in the event of reversal, to "remand the case to the Commission to carry out the judgment of the court". But this Court has already settled that this provision "means no more than that the Commission in its further action is to respect and follow the Court's determination of the questions of

law." *Radio Commission* v. *Nelson Bros. Co., supra,* 278. We are at a loss to see why the mere prospect of "further action", sanctioned by this Court, should be thought such a departure from the first judgment of the court below as to warrant mandamus; certainly there is no charge that the Commission will disregard the rulings of the Court of Appeals on the issues which were before that court on the appeal from the Commission's denial of the respondent's application.

The court below rested its assumption of power on the analogy to appellate review of equity cases, where after remand the equity court has no power without leave of the appellate court to grant a new trial or to hear new defenses (R. 27). We need not stop here to develop the differences between the issues tried in equity cases and in administrative hearings to determine if a broadcasting construction permit should be granted, or to emphasize the Commission's statutory duty to represent the interest of the public. For it is settled that remand of a cause to an administrative tribunal involves wholly different consequences. In *Ford Motor Co.* v. *Labor Board,* 305 U. S. 364, the Court affirmed a decision granting the petition of the Board for a remand before argument in order that it might correct possible procedural defects. The provisions governing review are substantially similar in the Communications and the National Labor Relations Acts. The *Ford* decision was reached because a similar course would be followed if the

court itself were to reverse and remand the cause. The Court said (p. 374):

> The "remand" does not encroach upon administrative functions. It means simply that the case is returned to the administrative body in order that it may take further action in accordance with the applicable law. See *Federal Radio Comm'n* v. *Nelson Brothers Co.*, 289 U. S. 266, 278.
>
> Such a remand does not dismiss or terminate the administrative proceeding. * * * If further evidence is necessary and available to supply the basis for findings on material points, that evidence may be taken. * * *

Thus, even if an equity court under comparable circumstances would be powerless to hear new issues,[2] the administrative tribunal is subject to no such limitation.

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[2] This is by no means certain. A judgment of reversal by an appellate court "is only final when it also enters or directs the entry of a judgment which disposes of the case". *Smith* v. *Adams*, 130 U. S. 167, 177. As previously pointed out, however, the Court of Appeals for the District of Columbia has no authority finally to dispose of any case involving an application for a permit to construct a radio station. The Commission is, therefore, possessed of at least as broad powers as those of a lower court, which may consider and decide any question left open by the judgment of reversal. "While a mandate is controlling as to matters within its compass, on the remand a lower court is free as to other issues". *Sprague* v. *Ticonic National Bank*, No. 543, October Term, 1938; see, also, *Mutual Life Insurance Company* v. *Hill*, 193 U. S. 551; *In re Sanford Fork & Tool Company, Petitioner*, 160 U. S. 247.

Nor can the decision below be justified by the provision in Section 402 (e) that "the court's judgment shall be final." This means that there can be no reexamination of issues settled by that judgment; it does not mean that the statutory duties of the Commission are to come to a halt.

2. The decision below is at war with the basic purpose of Sections 319 and 309 (a) of the Communications Act of 1934, *infra*, and will seriously hamper the Federal Communications Commission in its administration of that Act.

Section 319 (a) provides that the Commission may grant a construction permit "if public convenience, interest or necessity will be served by construction of the station." Section 309 (a) provides for the issuance of a station license, following the construction permit, if upon examination of the application the Commission determines that its granting will serve the "public interest, convenience, or necessity." The nature of the portion of the radio spectrum available for broadcasting is such that only a limited number of stations can operate within a particular area. Where, as here, several applicants request identical facilities, the grant of a permit to one station necessarily requires its denial to the others. Section 319 (a) requires the Commission not only to determine if a given application is in the public interest, but which of the competing applications will *best* serve the public interest. *Radio Commission* v. *Nelson Bros. Co.*,

supra, 285. Under the decision below, if the denial of one application upon a given ground has been reversed by the Court of Appeals, the applicant receives a preferred status so that the Commission would be powerless were it to determine another applicant to be more desirable in the public interest.

The court below could hardly have supposed the respondent, as a sort of added bounty for its first victory in the Court of Appeals, to have acquired immunity from the operation of Section 319 (a). It, of course, did not presume to say that the other applications—not acted on by the Commission and not before the court—would be less in the public interest than that of respondent. It must, therefore, have read the decision of the Commission as holding that respondent's application should at all costs be granted if it were financially responsible and if the non-residence of its principal stockholder were not fatal. But by writ of mandamus to hold the Commission to this doubtful interpretation of its opinion is to preclude reexamination by the Commission, in the light of subsequent applications, of its first decision as to public interest. The act contains no such self-defeating limitation on the Commission's duty. See *Radio Commission* v. *Nelson Bros. Co.*, *supra*, 285.

The court seems also to have been influenced by the fact that respondent "was first in the field" (R. 29). But Section 319 (a) requires that the permit be granted to the best qualified applicant, not to the first to file his application. The licensing

provisions are designed to secure the best use of the limited broadcasting facilities, and not to reward the victor in a race of diligence. In *Radio Commission* v. *Nelson Bros. Co., supra,* the Court affirmed a decision of the old Commission which terminated licenses of stations already in existence and rendering satisfactory service, in order to make way for wider use of a station offering substantially preferable programs.

Again, although the court did not base its decision on this, it emphasized (R. 26, 29) the Commission's rule of practice[1] that "the Commission will, so far as practicable, endeavor to fix the same date * * * for hearings on all applications which * * * present conflicting claims * * * excepting, however, applications filed after any such application has been designated for hearing." The excepting clause in this rule of procedural convenience seems to have been read by the court below as giving an absolute right of priority to the applicant whose application has been set for hearing before other applications are filed. But the rule, as the Commission urged below, merely provides that subsequent applications will not be set for hearing on the same date as those already set for hearing, and has no bearing on the order in which the applications will finally be decided. And even if the court below were correct, it would be in flagrant

[1] Rule 106.4; the rule has been superseded by sections 1.193 and 1.194 of the new Rules of Practice and Procedure, effective August 1, 1939 (4 Fed. Reg. 3345).

abuse of its powers if it were to issue a writ of mandamus because it thought the Commission had misinterpreted its own rule of practice.

It is unnecessary to emphasize the gravity of the decision below so far as it bears on the administration of the Communications Act. Plainly the allocation of radio facilities is no less important nor less in need of the expert knowledge and understanding of the Commission merely because an appeal has been taken to the Court of Appeals and the case remanded to the Commission.

So far as the decision is of more general application, because of the close similarity of the statutes providing for judicial review of administrative orders, it raises disturbing possibilities that many administrative agencies would have to reckon with a class of persons who have gained a qualified exemption from the governing statute because, on an unrelated issue, they had secured reversal of an earlier administrative determination.

3. The present case is not an isolated example of an interference by the court below with the administrative processes of the Federal Communications Commission. In *Heitmeyer* v. *McNinch*, the Commission denied an application for a construction permit because it thought the applicant's financial qualifications inadequate. The court below reversed (95 F. (2d) 91) and the Commission set the application for hearings *de novo* with two other applica-

tions. Heitmeyer applied for a "rule to show cause," which was denied by the court below. He then sought an injunction in the District Court against the Commission's granting any other license until it had considered his application on the original record. The court below, on an appeal from denial of a motion to dismiss, on April 3, 1939, held the District Court to be without jurisdiction but indicated that a petition to the appellate court for a writ of mandamus would be a proper remedy. On May 24, 1939, it ordered, in the same appellate proceeding,[4] that mandamus issue. In *The Courier Post Publishing Co.* v. *Federal Communications Commission,* 104 F. (2d) 213, the court below reversed a decision of the Commission denying a construction permit because no need for a local station had been shown. On remand, the Commission set the application for consolidated hearing with a second application which was originally heard with that of the Courier Post, but from the denial of which no appeal had been taken. The Courier Post petitioned the court

[4] On May 25, 1939, it ordered that the papers be transferred to the original docket. On June 20, 1939, in response to a petition by the Commission that it be allowed to be heard, it suspended the order for 10 days, allowing 5 days to the Commission to file a brief and 5 days for the applicant to answer. On July 12, 1939, it denied a petition of the Commission for oral argument and for annulment of the order. A petition for certiorari will be filed on behalf of the Commission.

for mandamus which was granted on June 30, 1939.[8] The court said that to recognize the principle urged by the Commission, that the judgment of the court reached only to the matters decided and did not foreclose further administrative action, "would be to establish an arbitrary discretion on the part of the Commission which we think is not provided in or contemplated by the Act."

It is unfortunate that there is this sharp difference of opinion between the court below and the Commission. Particularly since appeals under Section 402 go only to the court below, with the result that no conflict of decisions can develop, the orderly administration of the Communications Act of 1934 seems to require that the controversy be terminated by a decision of this Court.

4. The decision below seems also to constitute a grave departure from settled principles controlling the judicial review of administrative agencies and the issuance of writs of mandamus. (a) In the first place, it is by no means certain that respondent will not be granted its construction permit even if its

[8] The petition was granted in the docket proceeding in which the applicant had originally appealed. The papers were transferred to the original docket by order of the same day. On July 11, 1939, the court vacated the order, denied the Commission's motion for oral argument, and allowed it 10 days in which to file a brief. After the brief was filed, together with a memorandum for the petitioner, the court on August 2, 1939, reaffirmed its power to issue mandamus but allowed the Commission 15 days in which to controvert facts alleged in the petition or to make further pleadings.

application were considered with the other two applications on a comparative basis. The interposition of the Court of Appeals at this stage violates "the long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Myers* v. *Bethlehem Corp.*, 303 U. S. 41, 50–51. (b) In the second place, even if the Commission in the last analysis should be held not to have power to consider the three applications on a comparative basis, it hardly can be denied that the question, at the least, is doubtful. But a writ of mandamus may be issued only if the right be clear. *United States ex rel. Girard Co.* v. *Helvering*, 301 U. S. 540, 543. (c) Finally, it is settled that the issuance of a writ of mandamus is controlled by equitable considerations. *United States* v. *Dern*, 289 U. S. 352, 359. Even apart from the failure of respondent to show that it will suffer injury from the Commission's action in considering its application on a comparative basis, it should be observed that the effect of the judgment below is to give the applicant who secures a reversal on one issue a preferred status, such that other, and possibly more desirable, applications for the same facilities cannot be considered by the Commission. The Court of Appeals, acting as a court of equity in its review of Commission orders, should not in this manner contradict or qualify the statutory command that the Commission award construction

permits "if public convenience, interest or necessity will be served." See *United States* v. *Morgan,* No. 221, October Term, 1938.

CONCLUSION

It is therefore respectfully submitted that this petition for a writ of certiorari should be granted.

GOLDEN W. BELL,
Acting Solicitor General.

WILLIAM J. DEMPSEY,
General Counsel,
Federal Communications Commission.

AUGUST 1939.

APPENDIX

Communications Act of 1934, c. 652, 48 Stat. 1064, as amended May 20, 1937, c. 229, 50 Stat. 189:

SEC. 309 (a) If upon examination of any application for a station license or for the renewal or modification of a station license the Commission shall determine that public interest, convenience, or necessity would be served by the granting thereof, it shall authorize the issuance, renewal, or modification thereof in accordance with said finding. In the event the Commission upon examination of any such application does not reach such decision with respect thereto, it shall notify the applicant thereof, shall fix and give notice of a time and place for hearing thereon, and shall afford such applicant an opportunity to be heard under such rules and regulations as it may prescribe.

* * * * *

SEC. 319. (a) No license shall be issued under the authority of this Act for the operation of any station the construction of which is begun or is continued after this Act takes effect, unless a permit for its construction has been granted by the Commission upon written application therefor. The Commission may grant such permit if public convenience, interest, or necessity will be served by the construction of the station. This application shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and the financial, technical, and other ability of the

applicant to construct and operate the station, the ownership and location of the proposed station and of the station or stations with which it is proposed to communicate, the frequencies desired to be used, the hours of the day or other periods of time during which it is proposed to operate the station, the purpose for which the station is to be used, the type of transmitting apparatus to be used, the power to be used, the date upon which the station is expected to be completed and in operation, and such other information as the Commission may require. Such application shall be signed by the applicant under oath or affirmation.

(b) Such permit for construction shall show specifically the earliest and latest dates between which the actual operation of such station is expected to begin, and shall provide that said permit will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, unless prevented by causes not under the control of the grantee. The rights under any such permit shall not be assigned or otherwise transferred to any person without the approval of the Commission. A permit for construction shall not be required for Government stations, amateur stations, or stations upon mobile vessels, railroad rolling stock, or aircraft. Upon the completion of any station for the construction or continued construction of which a permit has been granted, and upon it being made to appear to the Commission that all the terms, conditions, and obligations set forth in the application and permit have been fully met, and that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit

would, in the judgment of the Commission, make the operation of such station against the public interest, the Commission shall issue a license to the lawful holder of said permit for the operation of said station. Said license shall conform generally to the terms of said permit.

* * * * *

SEC. 402. (b) An appeal may be taken, in the manner hereinafter provided, from decisions of the Commission to the Court of Appeals of the District of Columbia in any of the following cases:

(1) By any applicant for a construction permit for a radio station, or for a radio station license, or for renewal of an existing radio station license, or for modification of an existing radio station license, whose application is refused by the Commission.

(2) By any other person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing any such application.

(3) By any radio operator whose license has been suspended by the Commission.

(c) Such appeal shall be taken by filing with said court within twenty days after the decision complained of is effective, notice in writing of said appeal and a statement of the reasons therefor, together with proof of service of a true copy of said notice and statement upon the Commission. Unless a later date is specified by the Commission as part of its decision, the decision complained of shall be considered to be effective as of the date on which public announcement of the decision is made at the office of the Commission in the city of Washington. The Commission shall thereupon immediately, and in any event not later than five

days from the date of such service upon it, mail or otherwise deliver a copy of said notice of appeal to each person shown by the records of the Commission to be interested in such appeal and to have a right to intervene therein under the provisions of this section, and shall at all times thereafter permit any such person to inspect and make copies of the appellant's statement of reasons for said appeal at the office of the Commission in the city of Washington. Within thirty days after the filing of said appeal the Commission shall file with the court the originals or certified copies of all papers and evidence presented to it upon the application or order involved, and also a like copy of its decision thereon, and shall, within thirty days thereafter, file a full statement in writing of the facts and grounds for its decision as found and given by it, and a list of all interested persons to whom it has mailed or otherwise delivered a copy of said notice of appeal.

(d) Within thirty days after the filing of said appeal any interested person may intervene and participate in the proceedings had upon said appeal by filing with the court a notice of intention to intervene and a verified statement showing the nature of the interest of such party, together with proof of service of true copies of said notice and statement, both upon appellant and upon the Commission. Any person who would be aggrieved or whose interests would be adversely affected by a reversal or modification of the decision of the Commission complained of shall be considered an interested party.

(e) At the earliest convenient time the court shall hear and determine the appeal

upon the record before it, and shall have power, upon such record, to enter a judgment affirming or reversing the decision of the Commission, and in event the court shall render a decision and enter an order reversing the decision of the Commission, it shall remand the case to the Commission to carry out the judgment of the court: *Provided, however,* That the review by the court shall be limited to questions of law and that findings of fact by the Commission, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the Commission are arbitrary or capricious. The court's judgment shall be final, subject, however, to review by the Supreme Court of the United States upon writ of certiorari on petition therefor under section 240 of the Judicial Code as amended, by appellant, by the Commission, or by any interested party intervening in the appeal.

U. S. GOVERNMENT PRINTING OFFICE: 1939